



City of Austin

Law Department

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March 19, 2012

Ms. Bridget C. Bohac
Chief Clerk
ATTN: Agenda Docket Clerk, Mail Code 105
P.O. Box 13087
Austin, Texas 78711-3087

Re: Draft Water Use Permit No. 5852 for the Golf Club at Circle C,
TCEQ Docket No. 2011-2134-WR; City of Austin's Reply to Responses to Request for a
Contested Case Hearing

Dear Ms. Bohac:

The City of Austin continues to have concerns regarding the draft permit as written and would like to clarify that our concerns expressed through previous correspondence remain and the City still believes a contested case hearing would be the best forum for examining these concerns. The City agrees with the conclusion by both counsel for the Executive Director (ED) and Office of Public Interest Council (OPIC) that the City has a timely submitted hearing request. (See Attached Hearing Request Letter October 1, 2007). Historically the Commission has treated hearing requests filed prior to a public comment period as timely. In this instance when the applicant revised their application resulting in a revised draft permit, a second public comment period opened in the spring of 2011, making the City's October 1, 2007 hearing request letter timely for that public comment period based on the Commission's practice. Although there are some modifications in the draft permit, as mentioned, the City's issues with the draft permit have remained the same.

In addition to re-asserting the City's previous comments, the City believes that the requirement in Texas Water Code § 11.151 and the Commission's rules at § 297.47 that the Commission shall consider effects on groundwater or groundwater recharge has not been met. The Commission staff's assessment did not include any reference to these provisions, nor did it include the assessment required by these provisions.

Section 297.47 (a), requires among other things, that the Commission consider whether the proposed diversion is from a stream that provides significant recharge to a "sole source" aquifer. The streams that are the subject of this application recharge the Barton Springs Edwards Aquifer, which has been designated a sole source aquifer by the United States Environmental Protection Agency (Federal Register, v. 53, no. 109, p. 20,897-20,899). The Commission's rules in Chapter 213 relating to the Edwards Aquifer may also be implicated, as for example, in Section 213.3 (28) a *regulated activity* subject to the rules is defined to include, among other things, "post-construction activity on the recharge zone

of the Edwards Aquifer having the potential for polluting the Edwards Aquifer” The Environmental Analysis Addendum prepared by Commission staff regarding this application does not mention any consideration of Chapter 213 requirements.

In its hearing request, the City, among other things, commented on the potential impacts to surface and groundwater quality that could result from this permit and the possible adverse effect on economic and recreational sources managed by the City. In addition, the City owns water quality protection lands a short distance downstream of the golf course which is likely to be impacted by the discharge under the permit. For these and other reasons, the ED and OPIC concluded in their responses to hearing requests that the City of Austin is an affected person under the Commission’s rule §55.251 and entitled to a contested case hearing.

As discussed above, the City of Austin continues to have many concerns which should be addressed in a contested case hearing. If you have any questions or comments regarding our concerns, please contact me at (512) 974-2159.

Sincerely,



Ross Crow
Assistant City Attorney



City of Austin
Law Department

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October 1, 2007

Ms. LaDonna Castenuela
Chief Clerk's Office (MC-105)
Texas Commission on Environmental Quality
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VIA FACSIMILE

Ms. Kathy C. Hopkins
Project Manager
MC-160
Water Rights Permitting Team
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

VIA FACSIMILE

Re: Draft Water Use Permit No. 5852 for the Golf Club at Circle C

Dear Ms. Hopkins:

The City of Austin has concerns regarding the draft permit as written and would like to clarify that our concerns expressed through previous correspondence and public meetings are not withdrawn and that a contested case hearing would be the best forum for examining these concerns. Please note our comments below that reiterate concerns raised in our July 11, 2005 comment letter:

- 1) Waste:
The use of approximately 262 acre-feet per year and as much as 639 acre-feet per year of primarily groundwater for the purpose of irrigating a golf course constitutes a waste of the limited Trinity Aquifer. The Texas Water Development Board (TWDB) estimated that the entire year 2000 pumpage from the Middle and Upper Trinity Aquifer in Travis County to be about 3,250 acre-feet per year. The amount of expected withdrawal is therefore about 8% of the total Travis County Trinity Aquifer usage. A considerable amount of this precious groundwater would be wasted through evaporation in the ponds and golf course irrigation areas. Groundwater models by the TWDB of the Middle and Upper Trinity Aquifer suggest future usage will greatly surpass natural recharge and that portions of the Trinity Aquifer would dry from overuse. We have observed Trinity Aquifer wells in the vicinity of the

subject golf course where water levels have declined such that the well could no longer support the users. Although the decision to disallow diversion from Danz Creek was sound, it is unclear how the Texas Commission on Environmental Quality (TCEQ) can authorize and require use of such a large supply of groundwater that is obviously not sustainable.

2) Surface Water Quality:

The proposed water rights permit, if granted, will inadvertently result in degradation of the downstream water quality. Water quality in Danz Creek would be adversely affected by highly mineralized groundwater discharges unless significantly diluted to Texas Surface Water Quality Standards (TSWQS) as mentioned in the water quality review of the permit. The method or demonstration of meeting these standards and/or the proposed dilution source besides stormwater capture immediately around the impoundments is not specified. With sulfate levels of 677 to 1270 mg/l estimated from a single water-quality sample from each of two wells, at least a 13 to 25 fold dilution is required at all times to meet TSWQS. The water allocation as proposed is insufficient to both replace diverted and evaporated surface water and dilute the groundwater quality sufficiently to meet minimum standards. A significant portion of the downstream flows recharge the Barton Springs Edwards Aquifer, which is a federally-protected sole source aquifer that maintains about 45,000 individual users. This aquifer directly supplies municipalities such as the City of Sunset Valley. Further, the City of Austin owns Water-Quality Protection Lands a short distance east and downstream of the subject golf course whose surface and subsurface waters are likely to be impacted by this poor-quality discharge. In addition, this aquifer discharges at Barton Springs which contains the federally-listed endangered Barton Springs salamander (*Eurycea sosorum*) and represent an important economic and recreational resource for the City of Austin. The discharge as proposed in the draft water rights permit constitutes a prohibited intentional mixing of surface and groundwaters for dilution purposes.

3) Legal authority for water storage:

At least one of the impoundments referenced as holding for groundwater pumped under this permit is also covered under the 2002 Development Agreement between the City of Austin and Circle C Land Corp. (CCLC) which was recorded as Document No. 2002151984 of the Official Public Records of Travis County, Texas and as Document No. 02022402 of the Official Records of Hays County, Texas. Therefore, ownership and rights of use are uncertain and should be proven in the hearing before granting usage under TCEQ permit.

4) Legal authority for water usage in draft permit:

The City of Austin was assigned groundwater interests by a Groundwater Deed and Agreement as part of Bradley Agreement, which was recorded as Document No. 2000062856 of the Official Public Records of Travis County, Texas and as Document No. 00009382 of the Official Records of Hays County, Texas. In addition, the CCLC Agreement at Section 7.1.J Water Wells references two existing wells authorized to refill wet pond features on Parcel 115 and no new wells as long as the City of Austin provides water for other uses (City of Austin Water Utility has responded affirmatively to every request for

Ms. Kathy C. Hopkins

Draft Water Use Permit No. 5852 for the Golf Club at Circle C

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water service from this applicant). The CCLC Agreement does not authorize use to refill ponds on any other properties or use of wells for maintaining flow downstream. Although wells referenced in permit appear to be immediately adjacent to the land covered by the CCLC Agreement, if any water from these wells is to be used for the future Bear Creek Golf Course in addition to the existing Circle C golf course, the limitations in the Agreement would apply. Pumping limitations in Attachment O, Section VIII F. of the CCLC Agreement are less than the proposed maximum pumping in the TCEQ permit. Therefore, sufficient and appropriate limitations must be demonstrated in the hearing before approval of the permit.

5) Daily accounting plan:

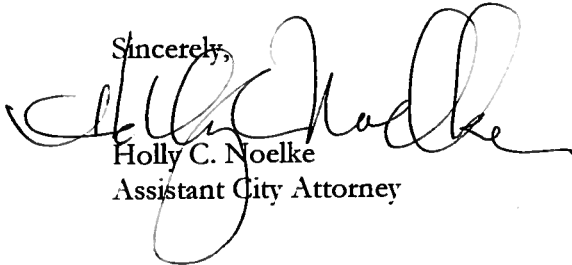
The draft permit references future daily accounting plan changes in Special Condition A that TCEQ will review and approve. The City of Austin can not determine consistency of this permit with the CCLC Agreement without seeing the final daily accounting plan. Any accounting plan should be submitted and evaluated prior to permit issuance and should be provided to the City of Austin to determine if the City will be adversely affected. The application materials are insufficient to determine whether the draft groundwater pumping limitations exceed what is legally available pursuant to CCLC's Agreement with City of Austin.

6) Best management practices:

Best management practices (BMPs) are included in the draft permit for both water quality and conservation; however, without an implementation plan it is impossible to determine if these BMPs will be adequate to prevent adverse effects on the City's interest in and right to quality and quantity of recharge guaranteed in the CCLC Agreement.

As discussed above, the City of Austin has many concerns which should be addressed in the contested case hearing. If you have any questions or comments regarding our concerns, please contact me at (512) 974-2179.

Sincerely,


A handwritten signature in black ink, appearing to read "Holly C. Noelke", written over the typed name and title.

Holly C. Noelke

Assistant City Attorney

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing has been served by first class mail on this the 19th day of March, 2012, to the persons on the attached mailing list.



Ross Crow

MAILING LIST
THE GOLF CLUB AT CIRCLE C, L.P.
DOCKET NO. 2011-2134-WR; WRPERM 5852

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